

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

SCOTT PELTZ,)	CASE NO.: 1:05 CV 2643
)	
Plaintiff,)	JUDGE DONALD C. NUGENT
)	
v.)	
)	
RICHARD N. MORETTI, et al.,)	<u>ORDER</u>
)	
Defendants.)	
)	

This matter is before the Court upon the Report and Recommendation of Magistrate Judge William H. Baughman, Jr. (ECF # 106). The Report and Recommendation, filed on September 21, 2009, is ADOPTED IN PART by this Court (ECF # 106), and Plaintiff's Motion for Summary Judgment is GRANTED IN PART and DENIED IN PART (ECF # 104).

This matter was referred to Magistrate Judge Baughman for general pretrial supervision, including the preparation of a report and recommendation on dispositive motions (ECF # 94). On April 20, 2009, Plaintiff Scott Peltz filed a Motion for Summary Judgment against Defendants Alan P. Metzger and Anderson Metzger & Company (collectively "Metzger"), seeking \$72,317.90 in compensatory damages, \$144,000.00 in punitive damages, along with attorney fees and costs. (ECF # 104.) On September 21, 2009, Magistrate Judge Baughman issued a Report and Recommendation that Plaintiff's Motion be granted in part and denied in part. In particular, Magistrate Judge Baughman recommended that the Motion for Summary Judgment on the issue of Metzger's participation in a civil conspiracy to commit fraud – proposed findings 1-13 – should be granted. (ECF # 106 at 15-18.) With respect to proposed findings 14 and 15, however, Magistrate Judge Baughman recommended that they be found to be "unsupported by the evidence and/or contrary to law. . . ." (*Id.* at 18.) Hence, the Magistrate

Judge recommended that the request for punitive damages, attorney fees, and costs should be denied. (*Id.* at 18-20.) No objections to the Report and Recommendation have been filed.

The Court has reviewed the Report and Recommendation *de novo*. See *Thomas v. Arn*, 474 U.S. 140 (1985). Upon consideration of the entire record, the Court finds Magistrate Judge Baughman's Report and Recommendation to be correct as to proposed findings 1-13 and punitive damages. With respect to attorney fees and costs, however, the Court declines to adopt the Report and Recommendation. This Court, instead, grants attorney fees and costs in favor of Plaintiff, and hereby **orders Plaintiff to file an affidavit supporting the amount of fees and costs requested no later than Friday, October 30, 2009. Any objection to the affidavit or the supporting materials filed by Plaintiff shall be filed no later than Friday, November 6, 2009.**

Based upon the foregoing, the Report and Recommendation is ADOPTED IN PART (ECF # 106), and Plaintiff's Motion for Summary Judgment is GRANTED IN PART and DENIED IN PART (ECF # 104).

IT IS SO ORDERED.

s/ Donald C. Nugent
DONALD C. NUGENT
United States District Judge

DATED: October 19, 2009